

JAN 18 2018



January 11, 2018

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Mike Covey Jr.  
Covey Auto Express, Inc.  
President and General Manager  
1444 El Pinal Drive  
Stockton, CA 95205

Charles Hastings  
Covey Auto Express, Inc.  
Agent for Service of Process  
4568 Feather River Dr.  
Stockton, CA 95219

Kathy M. Covey  
Covey Auto Express, Inc.  
Chief Executive Officer  
6996 E. Woodbridge Road  
Acampo, CA 95220

**RE: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE FEDERAL WATER POLLUTION CONTROL ACT ("CLEAN WATER ACT") (33 U.S.C. §§ 1251 et seq.)**

Dear Mr. Covey,

This firm represents The California Sportfishing Protection Association ("CSPA"), a California non-profit public benefit conservation and research organization, in regard to violations of the Clean Water Act ("CWA" or "the Act") occurring at Covey Auto Express, Inc. (Doing Business As Pacific Auto Transport) located at 1444 El Pinal Dr., Stockton, CA 95205 (the "Facility") with Waste Discharger Identification Number WDID 5S39I023338. This letter is being sent to you as the responsible owners, officers, and/or operators of the Facility. Unless otherwise noted, Covey Auto Express, Inc. (Doing Business As Pacific Auto Transport) shall hereinafter be referred to as "Covey Auto" and Mike Covey and Kathy Covey, shall collectively be referred to as the "Owners/Operators." CSPA is a non-profit public benefit conservation and research organization dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources throughout the state of California, including the San Joaquin River, the Smith Canal, and Yosemite Lake into which Covey Auto discharges polluted storm water.

Covey Auto is in ongoing violation of the substantive and procedural requirements of the CWA, 33 U.S.C. § 1251 *et seq.*; and California's General Industrial Storm Water Permit, National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 ("General Permit"), Water Quality Order No. 97-03-DWQ ("1997 General Permit"), as superseded by Order No. 2015-0057-DWQ ("2015 General Permit").<sup>1</sup>

The 1997 General Permit was in effect between 1997 and June 30, 2015, and the 2015 General Permit went into effect on July 1, 2015. As will be explained below, the 2015 General Permit includes many of the same fundamental requirements, and implements many of the same statutory requirements, as the 1997 General Permit. Violations of the General Permit constitute ongoing violations for purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4), each separate violation of the CWA occurring before November 2, 2015 commencing five years prior to the date of this Notice of Violation and Intent to File Suit subjects Covey Auto to a penalty of up to \$37,500 per day; violations occurring after November 2, 2015 and assessed on or after August 1, 2016 subjects Covey Auto to a penalty of up to \$51,570 per day. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) of the Act (33 U.S.C. §§ 1365(a), (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The CWA requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. See 40 C.F.R. 135.2.

As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, CSPA intends to file suit under Section 505(a) of the Act (33 U.S.C. § 1365(a)) in federal court against Covey Auto for violations of the Act and the General Permit.

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<sup>1</sup> Covey Auto submitted a Notice of Intent to comply with the General Permit for the Facility on or about May 27, 2015.

## **I. Background**

### **A. The Clean Water Act**

Congress enacted the CWA in 1972 in order to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251. The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *San Francisco Baykeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987) (codified at 33 U.S.C. § 1342(p)); *see also Env’tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Clean Water Act’s permitting scheme). The discharge of pollutants without an NPDES permit, or in violation of a NPDES permit, is illegal. *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing California’s intent to implement its own NPDES permit program). The CWA authorizes states with approved NPDES permit programs to regulate industrial storm water discharges through individual permits issued to dischargers, as well as through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(b). Pursuant to Section 402 of the Act, the Administrator of EPA has authorized California’s State Board Water Resource Control Board (“State Board”) to issue individual and general NPDES permits in California. 33 U.S.C. § 1342. The Board coordinates with the Central Valley Regional Water Quality Control Board (“Regional Board”), which has shared jurisdiction over the Facility for state and federal water pollution control efforts.

### **B. California’s General Permit for Storm Water Discharges Associated with Industrial Activities**

Between 1997 and June 30, 2015, the General Permit in effect was Order No. 97-03-DWQ, which CSPA refers to as the “1997 General Permit.” On July 1, 2015, pursuant to Order No. 2015-0057-DWQ, the General Permit was reissued, including many of the same fundamental terms as the prior permit. For the purposes of this notice letter, CSPA refers to the reissued permit as the “2015 General Permit.” The 2015 General Permit rescinded in whole the 1997 General Permit, except for the expired permit’s requirement that annual reports be submitted by July 1, 2015, and for the purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activities that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent to Comply ("NOI"). 1997 General Permit, Provision E.1; 2015 General Permit, Standard Condition XXI.A. Facilities must file their NOIs before the initiation of industrial operations. *Id.*

Facilities must strictly comply with all of the terms and conditions of the General Permit. A violation of the General Permit is a violation of the CWA. The General Permit contains three primary and interrelated categories of requirements: (1) discharge prohibitions, receiving water limitations and effluent limitations; (2) Storm Water Pollution Prevention Plan ("SWPPP") requirements; and (3) self-monitoring and reporting requirements.

### **C. Covey Auto's Industrial Facility**

Covey Auto's Facility is located on 1444 El Pinal Drive in Stockton, San Joaquin County, California. The Facility operates as a vehicle transport service hauling and delivering automobiles and other vehicles throughout the Western United States. Covey Auto transports vehicles for manufacturers, auctions, used car dealers, car collectors, federal departments, and individual owners. The Facility also provides towing services, and storage of impounded vehicles at the Facility. Non-operating vehicles may be cut down and sold for scrap, a process also occurring on site. Pursuant to the Facility's Notice of Intent to comply with the General Permit the Facility encompasses approximately 10 acres, with nine acres of industrial activity exposed to storm water. Scheduled facility operating hours are Monday through Friday, 8:00 AM to 5:00 PM.

According to The Facility's Storm Water Pollution Prevention Plan ("SWPPP") Covey Auto operates under Standard Industrial Classification (SIC) Code 5093, processing, reclaiming, and wholesale distribution of scrap and waste materials, or establishments primarily engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials. This industrial code includes auto wreckers engaged in dismantling automobiles for scrap. However, the Level 2 Exceedance Response Action Plan, recently submitted by the Owners/Operators of the Facility to the State Board, states that the Facility operates under three primary SIC Codes – 4213 for establishments primarily engaged in furnishing 'over-the-road' trucking services or trucking services and storage services, including household goods either as common carriers or under special or individual contracts or agreements, for freight generally weighing more than 100 pounds; 7549 for establishments primarily engaged in furnishing automotive services...including automotive towing service; and 5093. Under these SIC Codes, the General Permit requires Covey Auto to analyze storm water samples for Total Suspended Solids ("TSS"), pH, Oil and Grease ("O&G"), Zinc ("Zn"), Lead ("Pb"), Aluminum ("Al"), Iron ("Fe"), and Chemical Oxygen Demand ("COD"). Facilities must also sample and analyze for additional parameters identified on a facility specific basis to reflect pollutant a source assessment, due to receiving water

impairments, or as required by the Regional Board. 1997 General Permit, Section B.5.c.i; 2015 General Permit, Section XI.B.6.

Industrial activities at the Facility occur in the following industrial areas at the Facility site: maintenance and wash bays, fueling area, hazardous materials and waste storage area, a separate waste oil storage area, a vehicle storage area, and an intermodal storage area, a dismantling and fluid evacuation area, and parking areas. The Facility also has an administrative office. As examples of industrial activity on site, maintenance and repairs such as oils changes, brake changes, and general vehicle maintenance occur in the maintenance bays, and cars are drained of their fluids to be further dismantled in the dismantling and fluid evacuation area, and further dismantled and stored in the vehicle storage area. Dismantling of vehicles is accomplished by using a torch. Potential pollutants at the Facility include residual transmission, gasoline, brake, transmission and steering fluids and oils, motor oil and grease, coolant, acid from lead acid batteries, metals from stored vehicles, metals and suspended solids from operating vehicles, suspended solids from roadways and windblown sediment and dust, used coolant, and metals and chemicals from vehicle washing activities.

Covey Auto collects and discharges storm water associated with industrial activities pursuant to the General Permit primarily through a single main storm water discharge outfall for which is located on the north-west side of the Facility. Storm water is purported to follow flow patterns and enter a series of drain inlets and then passes through a sand/oil filter and is sampled prior to discharging into the City of Stockton's Municipal Separate Storm Sewer System ("MS4") and then into Yosemite Lake which is part of the Sacramento-San Joaquin Delta watershed, and directly connected to the San Joaquin River less than three miles away via the Smith Canal, a waterbody listed for the following impairments on the 2012 CWA Section 303(d) List of Impaired Waters: Pathogens, Pesticides, and Low Dissolved Oxygen. Yosemite Lake, the Smith Canal and the San Joaquin River are waters of the United States within the meaning of the CWA.

## **II. Covey Auto's Violations of the Act and the General Permit**

Based on its review of available public documents, CSPA is informed and believes that Covey Auto is in ongoing violation of both the substantive and procedural requirements of the CWA, and the General Permit. These violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the CWA, Covey Auto is subject to penalties for violations of the Act since January 11, 2013. CSPA expects to identify additional storm water pollutant discharges in violation of the CWA through Public Records Act requests to agencies expected to have custody of additional information regarding the Facility.

**A. Covey Auto Discharges Storm Water Containing Pollutants in Violation of the General Permit's Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations**

Covey Auto's storm water sampling results provide conclusive evidence of its failure to comply with the General Permit's discharge prohibitions, receiving water limitations and effluent limitations. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

**1. Applicable Water Quality Standards**

The General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. 1997 General Permit, Discharge Prohibition A.2; 2015 General Permit, Discharge Prohibition III.C. The General Permit also prohibits discharges that violate any discharge prohibition contained in the applicable Regional Board's Basin Plan or statewide water quality control plans and policies. 1997 General Permit, Receiving Water Limitation C.2; 2015 General Permit, Discharge Prohibition III.D. Furthermore, storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards in any affected receiving water. 1997 General Permit, Receiving Water Limitations C.1, C.2; 2015 General Permit, Receiving Water Limitations VI.A, VI.B.

Dischargers are also required to prepare and submit documentation to the Regional Board upon determination that storm water discharges are in violation of the General Permit's Receiving Water Limitations. 1997 General Permit, p. VII; 2015 General Permit, Special Condition XX.B. The documentation must describe changes the discharger will make to its current storm water best management practices ("BMPs") in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. *Id.*

The California Toxics Rule ("CTR") is an applicable water quality standard under the Permit, violation of which is a violation of Permit conditions. *Cal. Sportfishing Prot. Alliance v. Chico Scrap Metal, Inc.*, 2015 U.S. Dist. LEXIS 108314, \*21 (E.D. Cal. 2015) CTR establishes numeric receiving water limits for toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes a numeric limit for at least one of the pollutants discharged by the Covey Auto: Zinc – 0.12 mg/L (maximum concentration).

The *Water Quality Control Plan for the Central Valley Region* ("Basin Plan") also sets forth water quality standards and prohibitions applicable to Covey Auto's storm water discharges. The Basin Plan identifies existing and potential Beneficial Uses for Yosemite Lake to include contact and non-contact water recreation, wildlife habitat, cold

and warm freshwater habitat. The Basin Plan also lists numerous existing and potential Beneficial Uses for water bodies flowing the San Joaquin River and various stretches of the San Joaquin River. (Basin Plan, Table 2-1.)

Various stretches of the San Joaquin River have numerous, differing impairments listed on the 303(d) impairment list. The Sacramento San Joaquin Delta, hydrologically connected to the receiving waters discussed herein is also listed on the 303(d) impairment list for Chlordane, DDT, Dieldrin, Dioxin compounds, Furan Compounds, Mercury, PCBs and Selenium.

## **2. Applicable Effluent Limitations**

Dischargers are required to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable ("BAT") for toxic and nonconventional pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. Conventional pollutants include Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. 40 C.F.R. §§ 401.15-16.

Under the General Permit, benchmark levels established by the EPA ("EPA benchmarks") serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *Santa Monica Baykeeper v. Kramer Metals*, 619 F.Supp.2d 914, 920, 923 (C.D. Cal 2009); 1997 General Permit, Effluent Limitations B.5-6; 2015 General Permit, Exceedance Response Action XII.A.

The following EPA benchmarks have been established for pollutants discharged by Covey Auto: Total Suspended Solids – 100 mg/L; Zinc – 0.117 mg/L; Aluminum – 0.75 mg/L; Copper 0.0123 mg/L, COD – 120 mg/l, pH – 6-9 s.u, and Iron – 1 mg/L. The Basin Plan's Water Quality Standards for Central Valley require a narrower pH range of 6.5 – 8.5 pH units (Basin Plan).

## **3. Covey Auto's Storm Water Sample Results**

Covey Auto's SWPPP identifies only a single discharge point at the Facility, a single outfall located in the northwest part of the Facility. The Facility's SWPPP also notes that Covey Auto has many drain inlets throughout the site to prevent other discharges but in the unlikely event that the Facility did discharge from other site runoff that runoff would discharge into the Calaveras River.

Except as provided in Section XI.C.4 of the 2015 Permit, samples shall be collected from each drainage area at all discharge locations. The samples must be: a.

Representative of storm water associated with industrial activities and any commingled authorized non-storm water discharges; or, b. Associated with the discharge of contained storm water.

The following discharges of pollutants from the Facility have violated the discharge prohibitions, receiving water limitations, and effluent limitations of the Permit.

**a. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
3/26/2014	Outfall 1	TSS	272	100
11/24/2015	Outfall 1	TSS	388	100
12/15/2016	Outfall 1	TSS	121	100
12/23/2016	Outfall 1	TSS	117	100

**b. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
12/23/2016	Outfall 1	Al	2.6	0.75
3/26/2014	Outfall 1	Al	11	0.75
11/24/2015	Outfall 1	Al	10	0.75
12/3/2015	Outfall 1	Al	1.6	0.75
12/15/2016	Outfall 1	Al	3.5	0.75

**c. Discharges of Storm Water Containing Chemical Oxygen Demand (COD) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
11/24/2015	Outfall 1	COD	130	120

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
3/26/2014	Outfall 1	COD	170	120

**d. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
12/3/2015	Outfall 1	Fe	2.7	1.0
12/23/2016	Outfall 1	Fe	4.2	1.0
12/15/2016	Outfall 1	Fe	5.8	1.0
11/24/2015	Outfall 1	Fe	19	1.0
3/26/2014	Outfall 1	Fe	16	1.0
3/11/2016	Outfall 1	Fe	2.6	1.0

**e. Discharges of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
12/15/2016	Outfall 1	Zn	0.14	0.117
12/3/2015	Outfall 1	Zn	0.23	0.117
11/24/2015	Outfall 1	Zn	0.26	0.117
12/11/2014	Outfall 1	Zn	0.15	0.117
3/26/2014	Outfall 1	Zn	0.19	0.117

**f. Discharges of Storm Water Containing Copper (Cu) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
3/26/2014	Outfall 1	Cu	0.047	0.0123
12/11/2014	Outfall 1	Cu	0.02	0.0123
12/23/2016	Outfall 1	Cu	0.018	0.0123
12/15/2016	Outfall 1	Cu	0.023	0.0123

**g. Covey Auto's Sample Results Are Evidence of Violations of the General Permit**

Covey Auto's sample results demonstrate violations of the General Permit's discharge prohibitions, receiving water limitations, and effluent limitations set forth above. CSPA is informed and believes that the Covey Auto has known that its storm water contains pollutants at levels exceeding General Permit standards since at least January 11, 2013.

CSPA alleges that such violations occur each time storm water discharges from the Facility. Attachment A hereto, sets forth the specific rain dates on which CSPA alleges that Covey Auto has discharged storm water containing impermissible levels of TSS, Al, Cu, Fe, COD, and Zn in violation of the General Permit. 1997 General Permit, Discharge Prohibition A.2, Receiving Water Limitations C.1 and C.2; 2015 General Permit, Discharge Prohibitions III.C and III.D, Receiving Water Limitations VI.A, VI.B.

Because Covey Auto recorded averages of testing above Numeric Action Levels exceedances for TSS, Aluminum and Iron in both the 2015-16 and 2016-2017 reporting years, the Facility is currently at Exceedance Response Action Level 2 for those parameters.

**4. Covey Auto Has Failed to Implement BAT and BCT**

Dischargers must implement adequate BMPs that fulfill the BAT/BCT requirements of the CWA and the General Permit to reduce or prevent discharges of pollutants in their storm water discharges. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. To meet the BAT/BCT standard, dischargers must implement minimum BMPs and any advanced BMPs set forth in the General Permit's SWPPP Requirements provisions where necessary to reduce or prevent pollutants in discharges. See 1997 General Permit, Sections A.8.a-b; 2015 General Permit, Sections X.H.1-2. Sampling Orders of magnitude in excess of benchmark levels, as reported by Covey Auto, are evidence that Covey Auto does not have BMPs that achieve BAT/BCT (*Santa Monica Baykeeper v. Kramer Metals, Inc.* 619 F. Supp. 2d 914, 925 (C.D. Cal., 2009).)

Covey Auto has failed to implement the minimum BMPs required by the General Permit, including: good housekeeping requirements; preventive maintenance requirements; spill and leak prevention and response requirements; material handling and waste management requirements; erosion and sediment controls; employee training and quality assurance; and record keeping. 1997 General Permit, Sections A.8.a(i-x); 2015 General Permit, Sections X.H.1(a-g).

Covey Auto has further failed to implement advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT

standards, including: exposure minimization BMPs; containment and discharge reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to comply with the General Permit's effluent limitations. 1997 General Permit, Section A.8.b; 2015 General Permit, Sections X.H.2.

Each day the Owners/Operators have failed to develop and implement BAT and BCT at the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the CWA (33 U.S.C. § 1311(a)). The violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. Accordingly, the Owners/Operators have been in violation of the BAT and BCT requirements at the Facility every day since at least January 11, 2013.

**5. Covey Auto Has Failed to Develop and Implement an Adequate Storm Water Pollution Plan**

The General Permit requires dischargers to develop and implement a site-specific SWPPP. 1997 General Permit, Section A.1; 2015 General Permit, Section X.A. The SWPPP must include, among other elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) annual comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of each SWPPP amendment, if applicable. *See id.*

Dischargers must revise their SWPPP whenever necessary and certify and submit via the Regional Board's Storm Water Multiple Application and Report Tracking System ("SMARTS") their SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit via SMARTS for any non-significant revisions not more than once every three (3) months in the reporting year. 2015 General Permit, Section X.B; see also 1997 General permit, Section A.

CSPA's investigation indicates that Covey Auto has been operating with an inadequately developed or implemented SWPPP in violation of General Permit requirements. Covey Auto has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the Facility's numerous effluent limitation violations.

Each day the Owners/Operators failed to develop and implement an adequate SWPPP is a violation of the General Permit. The SWPPP violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. The Owners/Operators have been in violation of these requirements at the Facility every day since at least January 11, 2013.

**6. Covey Auto has Failed to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program**

Section B(1) and Provision E(3) of the 1997 Permit required Facility Owners/Operators to develop and implement an adequate Monitoring and Reporting Program. Similarly, Section X.I of the 2015 General Permit requires Facility Owners/Operators to develop and implement a Monitoring Implementation Plan ("MIP"). The primary objective of the monitoring and reporting requirements is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. See 1997 General Permit, Section B(2); 2015 IGP Fact Sheet, Section II.J(1). Monitoring undertaken must therefore determine whether pollutants are being discharged, and whether response actions are necessary, and must evaluate the effectiveness of BMPs. See 2015 General Permit, Section I.J(56).

Sections B(5) and B(7) of the 1997 General Permit, and Section XI.A of the 2015 General Permit, require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged. Under XI.B of the 2015 General Permit, the Facility Owners/Operators are required to collect at least two (2) samples from each discharge location at their Facility during the Wet Season. Storm water samples must be analyzed for TSS, pH, O&G, and other pollutants that are likely to be present in the Facility's discharges in significant quantities. See 2015 General Permit, Section XI.B(6).

The Facility Owners/Operators have been conducting operations at the Facility with an inadequately developed, implemented, and/or revised MIP. Upon information and belief, the Facility Owners/Operators have only collected samples from one discharge point each time they have undertaken sampling at the Facility. Based on information available to CSPA, the Facility Owners/Operators consistently failed to properly collect samples from other discharge locations.

The Facility Owners'/Operators' failure to conduct sampling and monitoring as required by the General Permit demonstrates that it has failed to develop, implement, and/or revise an MIP that complies with the requirements of Section B and Provision E(3) of the 1997 General Permit and Section XI of the 2015 General Permit. Every day that the Facility Owners/Operators conduct operations in violation of the specific monitoring requirements of the 1997 Permit or the 2015 General Permit, or with an inadequately developed and/or implemented MIP, is a separate and distinct violation of the 1997 General Permit or the 2015 General Permit, and the Clean Water Act. The Facility Owners/Operators have been in daily and continuous violation of the General Permit's MIP requirements every day since at least January 11, 2013. These violations are ongoing, and CSPA will include additional violations when information becomes available, including specifically continuing violations of the 2015 General Permit monitoring requirements (see 2015 General Permit, Section XI.). The Facility

Owners/Operators are subject to civil penalties for all violations of the Clean Water Act occurring since January 11, 2013.

## **7. Failure to Comply with the Storm Water Permit's Reporting Requirements**

Section B(14) of the 1997 General Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 General Permit includes the same annual reporting requirement. See 2015 General Permit, Section XVI.

The Facility Owners/Operators have also submitted incomplete Annual Reports. For instance, the Facility operators must report any noncompliance with the General Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. 1997 General Permit, Section C(11)(d). The Facility Owners and/or Operators did not report their non-compliance as required. Further, Covey Auto failed to undertake sampling, and report results from, every discharge point at the Facility, as required by the General Permit.

Last, the General Permit requires a permittee whose discharges violate the General Permit's Receiving Water Limitations to submit a written report identifying what additional BMPs will be implemented to achieve water quality standards, along with an implementation schedule. 1997 General Permit, Receiving Water Limitations C(3) and C(4). Information available to CSPA indicates that the Facility Owners/Operators failed to submit the reports required by Receiving Water Limitations C(3) and C(4) of the 1997 General Permit. As such, the Owners and/or Operators are in daily violation of this requirement of the General Permit.

Information available to CSPA indicates that the Facility Owners/Operators have submitted incomplete and/or incorrect Annual Reports that fail to comply with the General Permit. As such, the Owners/Operators are in daily violation of the General Permit. Every day the Facility Owners/Operators conduct operations at the Facility without reporting as required by the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners/Operators have been in daily and continuous violation of the General Permit's reporting requirements every day since at least January 11, 2013. These violations are ongoing, and CSPA will include additional violations when information becomes available, including specifically violations of the 2015 General



Permit reporting requirements (see 2015 General Permit, Section XVI.). The Facility Owners/Operators are subject to civil penalties for all violations of the Clean Water Act occurring since January 11, 2013.

### **III. Persons Responsible for the Violations**

CSPA puts Covey Auto on notice that it is the entity responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Covey Auto on formal notice that it intends to include those persons in this action.

### **IV. Name and Address of Noticing Party**

The name, mailing address, and telephone number of the noticing party is as follows:

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance  
3536 Rainier Ave,  
Stockton, CA 95204  
(209) 464-5067  
[www.calsport.org](http://www.calsport.org)

### **V. Counsel**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Anthony M. Barnes  
AQUA TERRA AERIS (ATA) LAW GROUP  
828 San Pablo Ave, Ste 115B  
Albany, CA 94706  
(917) 371-8293  
[amb@atalawgroup.com](mailto:amb@atalawgroup.com)

### **VI. Conclusion**

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against Covey Auto and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. We do not



intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony M. Barnes". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

---

Anthony M. Barnes  
ATA Law Group  
Counsel for California Sportfishing  
Protection Alliance



**SERVICE LIST**

**VIA CERTIFIED MAIL**

Scott Pruitt, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Alexis Strauss, Acting Regional  
Administrator  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Eileen Sobeck, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Pamela C. Creedon, Executive Officer  
Central Valley Regional Water Quality  
Control Board  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670-6114

**EXHIBIT A**

Rain Data: US1CASJ0006 STOCKTON 3.3 SE, CA US

1-11-2015 - 1-7-2018

Days with Precipitation over .1

Date	Precipitation (Inches)
2/20/2013	0.16
3/6/2013	0.22
3/20/2013	0.19
3/31/2013	0.42
4/1/2013	0.32
4/4/2013	0.29
4/5/2013	0.11
6/25/2013	0.13
9/22/2013	0.36
11/20/2013	0.52
11/21/2013	0.45
12/7/2013	0.48
1/30/2014	0.1
2/3/2014	0.15
2/6/2014	0.3
2/8/2014	0.43
2/9/2014	0.63
2/10/2014	0.19
2/27/2014	0.47
2/28/2014	0.71
2/20/2013	0.16
3/6/2013	0.22
3/20/2013	0.19
3/31/2013	0.42
4/1/2013	0.32
4/4/2013	0.29
4/5/2013	0.11
6/25/2013	0.13
9/22/2013	0.36
11/20/2013	0.52
11/21/2013	0.45
12/7/2013	0.48
1/30/2014	0.1
2/3/2014	0.15
2/6/2014	0.3
2/8/2014	0.43
2/9/2014	0.63
2/10/2014	0.19
2/27/2014	0.47
2/28/2014	0.71
3/1/2014	1.25
3/3/2014	0.19
3/4/2014	0.3
3/6/2014	0.23

<b>Date</b>	<b>Precipitation (Inches)</b>
3/6/2014	0.23
3/27/2014	0.4
3/30/2014	0.67
4/1/2014	0.14
4/2/2014	0.4
4/25/2014	0.14
4/26/2014	0.82
9/26/2014	0.42
11/1/2014	0.48
11/13/2014	0.33
11/20/2014	0.11
11/21/2014	0.13
11/23/2014	0.25
12/1/2014	0.43
12/2/2014	0.45
12/3/2014	0.9
12/4/2014	0.17
12/12/2014	2.66
12/15/2014	0.52
12/16/2014	0.36
12/17/2014	0.56
12/18/2014	0.1
12/20/2014	0.46
2/7/2015	0.55
2/8/2015	0.65
2/9/2015	0.39
3/12/2015	0.11
4/7/2015	0.23
4/8/2015	0.51
4/25/2015	0.76
6/11/2015	0.11
10/1/2015	0.27
11/2/2015	0.68
11/3/2015	0.34
11/9/2015	0.19
11/10/2015	0.23
11/15/2015	0.15
11/25/2015	0.2
12/4/2015	0.21
12/11/2015	0.57
12/14/2015	0.4
12/19/2015	0.22
12/22/2015	0.66
12/25/2015	0.3
12/28/2015	0.13
1/5/2016	0.91
1/6/2016	0.57
1/7/2016	0.1
1/15/2016	0.11
1/16/2016	0.26

<b>Date</b>	<b>Precipitation (Inches)</b>
1/18/2016	1.55
1/19/2016	0.13
1/20/2016	0.66
1/23/2016	0.62
1/30/2016	0.32
2/18/2016	0.55
3/5/2016	0.32
3/6/2016	1.28
3/7/2016	1.02
3/12/2016	0.65
3/13/2016	0.14
3/14/2016	0.74
4/9/2016	0.28
4/10/2016	1.92
4/23/2016	0.25
5/7/2016	0.32
5/22/2016	0.12
10/15/2016	0.58
10/17/2016	1.04
10/28/2016	0.71
10/29/2016	0.31
10/31/2016	0.27
11/20/2016	0.5
11/21/2016	0.39
11/23/2016	0.1
11/27/2016	0.65
12/8/2016	0.3
12/10/2016	0.1
12/11/2016	0.36
12/16/2016	0.7
12/24/2016	0.54
1/3/2017	0.19
1/4/2017	0.82
1/5/2017	0.55
1/7/2017	0.35
1/8/2017	0.77
1/9/2017	0.63
1/10/2017	0.57
1/11/2017	1.19
1/19/2017	0.85
1/20/2017	0.4
1/21/2017	0.52
1/22/2017	0.35
1/23/2017	0.63
1/24/2017	0.18
2/2/2017	0.2

Date	Precipitation (Inches)
2/4/2017	0.35
2/6/2017	0.27
2/7/2017	0.87
2/8/2017	0.42
2/10/2017	1.1
2/11/2017	0.12
2/17/2017	0.17
2/18/2017	0.1
2/20/2017	0.78
2/21/2017	0.81
2/22/2017	0.26
3/5/2017	0.22
3/21/2017	0.64
3/22/2017	0.83
3/23/2017	0.3
3/25/2017	0.16
4/7/2017	0.58
4/8/2017	0.38
4/9/2017	0.1
4/13/2017	0.24
4/17/2017	0.36
4/18/2017	0.36
10/20/2017	0.16
11/16/2017	0.73
11/27/2017	0.19
1/4/2018	0.36
1/6/2018	0.25